

**STATE OF NEW MEXICO
BEFORE THE DEPUTY SECRETARY OF ENVIRONMENT**

**IN THE MATTER OF THE APPLICATION
OF CONOCOPHILLIPS COMPANY
FOR AN AIR QUALITY PERMIT**

AQB 21-36

**NEW MEXICO ENVIRONMENT DEPARTMENT AIR QUALITY BUREAU'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

COMES NOW, the Air Quality Bureau ("Bureau"), within the Environmental Protection Division ("Division") of the New Mexico Environment Department ("Department"), and respectfully submits these Proposed Findings of Fact and Conclusions of Law in the above captioned matter, pursuant to 20.1.4.400(B) NMAC.

I. PROPOSED FINDINGS OF FACT

A. The Applicant and Facilities

1. ConocoPhillips Company ("Permittee" or "CPC") is a Texas-based company and the owner/operator of the Zia Hills Central Facility ("Facility"), located in Lea County, New Mexico, Section 19, Range 32E, Township 26S. [AR No. 1, Bates 004-006].

B. The Bureau's Administrative and Technical Review of the Application

2. The application for the Facility ("Application") was received by the Bureau on January 11, 2021. [NMED Exhibits 29 at 3; AR No. 1, Bates 0001 - 0257].

3. In the Application, the Permittee proposes an increase in oil production to 18,503 barrels of oil per day (BOPD) and an increase in gas production to 120 million standard cubic feet per day (MMscfd) requiring two additional triethylene glycol dehydrators (DEHY3-DEHY4) and

full-time usage of another stabilizer (STAB3). The Facility has an air quality General Construction Permit for Oil and Gas Facilities (GCP-O&G) to operate at this location. The new permit would replace the existing GCP-O&G for this facility. [Id.].

4. Upon receipt of the Application, Bureau staff forwarded the Permittee's respective modeling files to the Bureau's Modeling Manager. [NMED Exhibits 29 at 3; AR No. 154, Bates 1164 - 1165].

5. On February 8, 2021, Bureau staff were informed that the Application could be ruled complete from a modeling perspective. [NMED Exhibit 29 at 4; AR No. 156, Bates 1167].

6. On March 10, 2021, Bureau staff ruled the Application administratively complete. [NMED Exhibit 29 at 4].

7. Bureau staff began the technical review of the Application after a determination that each application was administratively complete. During the technical review, Bureau staff verified emissions calculations by confirming the correct emission factors and formulas were used in calculating emissions for all sources. If methods were unclear, Bureau staff asked the Permittee's consultant for further explanation or updates, as necessary. Bureau staff also verified the emissions totals from the calculations matched the emissions totals in Section 2 of the application. [NMED Exhibit 29 at 5-6].

8. Bureau staff reviewed the emission calculations submitted in the Application for all regulated equipment and the respective emission factors relied upon in those calculations. The Facility's emissions were calculated using Excel spreadsheets using manufacturer's data sheet emission factors, Texas Commission on Environmental Quality emission factors, or the United States Environmental Protection Agency's ("EPA") *AP-42 Compilation of Air Emission Factors*,

including EPA's *Protocol for Equipment Leak Emission Estimates* (EPA-453/R-95-017), as well as oil and gas industry software, such as *ProMax*®. [NMED Exhibit 29 at 5-7].

9. The Bureau's administrative and technical reviews for the Application are summarized in the Statement of Basis, which is a permitting record that includes: (1) a description and history of the facility; (2) a regulatory applicability review; (3) a compliance discussion; (4) any public response received by the Department; and (5) a summary any unique conditions in the permit. [NMED Exhibit 29 at 4; AR No. 13, Bates 0400-0412]. [NMED Exhibit 29 at 20].

10. Bureau staff testified that based on the Bureau's administrative and technical review of the Application, the Bureau recommends that the Secretary adopt the Draft Permit. [NMED Exhibit 29 at 7; AR No. 2, Bates 0258 - 0266].

C. The Bureau's Public Outreach for the Application

11. For the Application. Bureau staff sent the completion determination letter, including a copy of the Department's Legal Notice, and the invoice for the permit fee to the applicant on March 18, 2021. [NMED Exhibit 29 at 3].

12. Bureau staff sent the completion determination letter, including a copy of the Department's Legal Notice, and the invoice for the permit fee to the Permittee on February 10, 2021. Bureau staff also sent the Department's Legal Notice to EPA Region 6; Erica LeDoux at EPA, and to the State of Texas. On February 10, 2021, Vivian C. Bermudez at CPC e-mailed Bureau staff to request clarification on how the Bureau calculated the general review fee. On February 10, 2021, the Bureau responded to Ms. Bermudez at CPC via e-mail to provide the excel calculation spreadsheet of the Department's fee calculator. Mr. Tullos also sent an email to the

Bureau on February 10, 2021 to notify that CPC was still working on responses regarding the stack tests for engines. The Department's Legal Notice and Application 7746M8 was posted on the AQB website on the page with all public notices of permitting actions. The Bureau's administrative staff sent the Department's Legal Notice to the *Hobbs-News Sun* for publication, and it was published in that newspaper on February 17, 2021. [NMED Exhibit 29 at 4-5; AR Nos. 35-37, Bates 0571 – 0577; AR Nos. 178-182, Bates 1246 – 1252; AR No. 38, Bates 0578; AR Nos. 39-40, Bates 0579 – 0580; AR No. 41, Bates 0581; AR Nos. 183-184, Bates 1253 – 1254; AR No. 185, Bates 1255 - 1256].

13. The Bureau sent out the first citizen letter for the Application on May 21, 2021. [NMED Exhibit 29 at ; AR Nos. 167-168, Bates 1226 - 1230].

14. The Bureau received WildEarth Guardians' ("WEG") initial comments for the Application on March 12, 2021. [NMED Exhibit 29 at 9].

15. On June 18, 2021, the Bureau mailed a copy of the Draft Permit and the second citizen letter to WEG and interested parties. The draft permit and second citizen letter were posted on the AQB website. The Bureau received additional comments from WEG on July 16, 2021. [NMED Exhibit 29 at 9-10; AR Nos. 171-172, Bates 1235-1236; AR Nos. 189-190, Bates 1261 – 1262; AR Nos. 175-77, Bates 1239-1245].

D. The Draft Permit

16. Conditions in the Draft Permit are Facility Specific Requirements, unique to the facility. They are site-specific and based on information provided in the applications. Conditions in Part B of the permits are General Conditions and standard language which generally apply to

all sources. Part C is also standard language about supporting on-line documents, definitions, and acronyms which apply to all sources. [NMED Exhibit 29 at 11-12; AR No. 10, Bates 0461 - 0512].

17. The Draft Permit began with standardized language in a Bureau permit template and standardized AQB monitoring protocols added as necessary for the sources of emissions and control devices proposed for the facility. [Id.].

E. Air Dispersion Modeling for the Respective Permits

18. Bureau staff verified that the Application followed appropriate modeling practices, as informed by the New Mexico Modeling Guidelines. Details of the modeling are described in the Modeling Review Report. [NMED Exhibit 11 at 1; NMED Exhibit 15; AR No. 6].

19. Bureau staff confirmed that the modeling for the Application was performed in accordance with the New Mexico Modeling Guidelines. If the facilities operate in compliance with the terms and conditions of the respective draft permits, then they will not cause or contribute to any concentrations above state or federal ambient air quality standards or PSD increments. The facilities have satisfied all modeling requirements. [Id.].

F. Public Notice of the Hearing

20. The Notice of Hearing was written per requirements in 20.1.4 NMAC. The Notice of Hearing was translated into Spanish by Ana Maria MacDonald, Translation Program Manager for the Department, and was received by the Bureau on September 20, 2021. On September 21, 2021, Notices of Hearing in English and in Spanish were posted on the Department's Docketed Matters page under the Cabinet Secretary dropdown, in the link for the respective docket number and facility name. The notice was also posted on Department's public notice website under the

Lea or Eddy County dropdown, in the link for each of the facilities included in the hearing. [Id. See sections above for citations to specific notice documents]

21. The Notice of Hearing was published in English and in Spanish in three newspapers. Both Notices were published in the *Carlsbad Current-Argus* on September 22, 2021. Both Notices were published in the *Albuquerque Journal* on September 23, 2021. Both Notices were published in the *Hobbs Daily News-Sun* on September 24, 2021. On September 22, 2021, emails with the Notices of Hearing in English and in Spanish attached were sent to individuals and groups that had been previously directly notified about one of the permit applications or that submitted comments on a permit application. [Id. at 2-3. See sections above for citations to specific notice documents].

G. WildEarth Guardians' Challenges to the Permits

22. At the public hearing in this matter, WEG's witness testified that the Bureau had resolved most of WEG's concerns about the Application and Draft Permit with a few exceptions. The witness explained that

[WEG] provided comments on the initial -- during the initial comment period whereby the Environment Department asks if there's any public interest. We signaled that we were interested and tried to provide some comments, some general comments. When the Environment Department afforded us a second opportunity to comment and provided us a draft permit and statement of basis to review, we submitted further comments, often elaborating on our original letter and original concerns that we raised. And we did that for all these permits . . . we weighed in, we constantly gave the Environment Department information, and flagged our concerns, and now during this hearing we're finally getting some clarity around some of our questions, some of our concerns, and some issues with the permits.

[10/26/21 2 Tr. 314:11-21; 315:1-16]

23. WEG's witness testified that the only outstanding challenges to the Draft Permits were "the enforceability of startup, shutdown, maintenance, and malfunction emission limits, and compliance with the Executive Order on Environmental Justice . . ." [10/26/21 2 Tr. 314:11-21; 315:6-316:12]

i) Environmental Justice

24. At the hearing, WEG raised concerns about the Bureau's permitting procedures with regard to the issue of environmental justice. WEG's witness testified that

I mean, our concerns basically boil down to the substance of what environmental justice is, that procedurally the Environment Department may have taken some steps to address environmental justice concerns, but that substantively environmental justice was not achieved, primarily around the issue of cumulative impacts related to ozone pollution, which as we commented, can disproportionately impact people of color and low-income communities that may be impacted by other sources of industrial air pollution, and therefore are experiencing compound effects related to high ozone, and that those effects should have been addressed as part of their duty to ensure environmental justice.

[10/26/21 2 Tr. 317:11-24].

25. An objection was raised to WEG's testimony on the grounds that WEG's witness was not qualified to draw the legal conclusion that the Bureau did not fulfill its duty with regard to the issue of environmental justice. The Hearing Officer sustained the objection. [10/26/21 2 Tr. 341:13-21].

ii) Flaring Events

26. WEG raised concerns about how the all of the draft permits in this matter deal with flaring events. WEG's witness testified

One, the startup, shutdown, and maintenance [for all the Draft Permit] emissions related to flaring, which is a common limit in all . . . permits. The concern there is that the number of flaring events or startup, shutdown, maintenance events are not

limited such that as a practical matter the annual limits will actually be complied with, that they -- the intention is that those annual limits serve as a backstop, but as a practical matter, because there are no limits on operational parameters to limit the hourly emissions or the number of hourly emissions events, that as a practical matter that backstop is not effective.

The second issue related to those -- enforceability of these limits is related to venting emissions, primarily venting during malfunction events, but there are venting emission limits in relation to other events, as well. The concern there is that the permits do not set forth any kind of methodology or specific requirement for how the companies must measure the volume of VOC emissions. It uses -- the permits use very general language that does not ensure that as a practical matter accurate volumes of VOC emissions will be calculated such that companies will be able to effectively demonstrate compliance with the venting emission limits.

[10/26/21 2 Tr. 318:10-319:10].

27. Bureau staff testified that the conditions in the Draft Permit “comply with all air quality regulations and contain demonstrations of compliance for all conditions and emission limits to ensure compliance with Ambient Air Quality Standards. [NMED Exhibit 17 at 9].

II. PROPOSED CONCLUSIONS OF LAW

28. The Secretary has jurisdiction over the subject matter of the Application and the parties to this proceeding and is authorized by the Act to issue or deny permits for new and existing facilities based upon information submitted in a permit application and relevant information received during the public hearing. NMSA 1978, §74-2-7 (1972 as amended through 2003); 20.2.72.206-207 NMAC.

29. In a permit proceeding hearing before the Secretary of the Environment, “the Applicant or Petitioner has the burden of proof that a permit . . . should be issued and not denied . . . the [Bureau] has the burden of proof for a challenged condition of a permit or license which the [Bureau] has proposed. Any person who contends that a permit condition is inadequate, improper,

or invalid, or who proposes to include a permit condition shall have the burden of going forward to present an affirmative case on the challenged condition.” 20.1.4.400(A)(1) NMAC.

30. The Permittee properly submitted its Application pursuant to the Air Quality Control Act (“Act”), NMSA, 1978 74-2-1 to -17 (1967 as amended through 2019) and the Air Quality Rules, and all the required information is included in the application. 20.2.72.200(A); 20.2.72.402(A)(3); 20.2.72.203 and 20.2.72.403 NMAC.

31. Permittee’s Application establishes that the Facility meets the applicable statutory and regulatory standards, will not cause or contribute to air contaminant levels in excess of national or state standards or, and will not violate any other provision of the Air Quality Control Act or the CAA. NMSA 1978, § 74-2-7(C).

32. The Bureau’s administrative and technical review of the Application was thorough, complete, and sufficient to support the determination that the Application was administratively and technically complete. 20.2.72.201(B); 20.2.72.207(A) NMAC.

33. The Bureau has met all the elements of the statutory and regulatory standards with regard to public notice of the determination of administrative and technical completeness, and notice of the Draft Permit. NMSA 1978, §§ 14-11-2 (1941 as amended through 1999); 14-11-4 (1941); 14-11-6 (1941); 14-11-10.2 (2003); 20.2.72.206(A)(3) NMAC.

34. The Bureau has met all the elements of the regulatory standard with regard to public notice of the public hearing. NMSA 1978, §§ 14-11-2 (1941 as amended through 1999); 14-11-4 (1941); 14-11-6 (1941); 14-11-10.2 (2003); 20.1.4.200(C)(2)(a) NMAC.

35. The Bureau has met all of the elements of the regulatory standards with regard to public outreach and receiving public comment. 20.2.72.206(A)(1) and (2) NMAC; 20.2.72.206(B)

NMAC;

36. The Public Hearing in this matter was held in accordance with an Order for a public hearing entered by the Secretary of the Environment. 20.2.72.206(C) NMAC.

37. The hybrid virtual/in-person venue of the Public Hearing in this matter was appropriate and complied with the standing public health orders. NMSA 1978, § 47-2-7(I) (1972 as amended through 2003); 20.2.72.206-207 NMAC; and 20.1.4 NMAC; Executive Order 2020-004; 3-24-20 Public Health Order.

38. WEG has failed to meet its burden to prove that any conditions of any of the Draft Permit are inadequate, improper or invalid. 20.1.4.100(A)(1) NMAC.

39. The Draft Permit meets all of the applicable standards, rules and requirements of the Air Quality Control Act and the CAA. NMSA 1978, § 74-2-7(C).

III. CONCLUSION

For the reasons set forth above, the Bureau respectfully requests that the Hearing Officer adopt these findings of fact and conclusions of law, and recommend that the Secretary uphold the Bureau's decision to issue the Permit in this matter.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT

/s/ Chris Vigil
Assistant General Counsel
New Mexico Environment Department
121 Tijeras Ave. NE, Ste. 1000
Albuquerque, NM 87102
Phone: (505) 469-4696
Fax: (505) 383-2064
Email: christopherj.vigil@state.nm.us

AQB 21-36 (P)
Air Quality Bureau's
Proposed Findings and Conclusions
Page 10 of 11

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing New Mexico Environment Department Air Quality Bureau's *Proposed Findings of Fact and Conclusions of Law* was served via electronic mail on the following parties of record on December 1, 2021:

J. Scott Janoe
Harrison Reback
Baker Botts LLP
910 Louisiana St.
Houston, TX 77002
scott.janoe@bakerbotts.com
harrison.reback@bakerbotts.com

Attorneys for ConocoPhillips

Matthew A. Nykiel
WildEarth Guardians
3798 Marshall St., Ste. 8
Wheat Ridge, CO 80033
mnykiel@wildearthguardians.org

Attorney for WildEarth Guardians

/s/Chris Vigil
Chris Vigil
Assistant General Counsel